TENAGA NASIONAL BHD v. KEYAKI CORPORATION SDN BHD

COURT OF APPEAL, PUTRAJAYA
ABDUL WAHAB PATAIL JCA
BALIA YUSOF WAHI JCA
TENGKU MAIMUN JCA
[CIVIL APPEAL NO: J-02-273-2011]
20 NOVEMBER 2014

LAND LAW: *Trespass – Wrongful entry – Electricity transmission towers erected after respondent purchased land – Whether appellant re-entered land to exercise its right of way – Whether appellant had previously entered land – Conduct of appellant – Whether abandoned or revoked right of way on land – Whether re-entry on land justified*

The respondent purchased two vacant lots of adjoining land in the town of Muar. At the time of purchase, there were neither any electricity transmission lines nor electricity transmission towers on the said lots. However, subsequent to the purchase, the appellant was found to have entered the land to erect massive electricity transmission towers. There were also huge electricity cables across the said land. The respondent then filed an action against the appellant for trespass and sought injunction for the appellant to quit and remove all posts and pylons on the land. The High Court allowed the respondent's claim. Dissatisfied, the appellant appealed against the decision. The appellant who had a right of way, which it failed to have registered on the title for its transmission lines, had removed the said transmission lines. However, before the appellant re-entered the land to exercise its, the respondent had purchased the two adjoining lands without any knowledge of the appellant's right of way. The respondent, on the other hand, contended that it suffered losses since it relied on the physical condition of the land at the time the lots were purchased.

Held (allowing appeal; setting aside decision of the High Court)
Per Abdul Wahab Patail JCA delivering the judgment of the court:

(1) The appellant had previously entered the land and the impugned entry was a re-entry. There was no evidence of abandonment of the right of way or that the right of way had been revoked. Without proving, *inter alia*, that the appellant's old transmission lines in existence were in fact trespassing on the lands, there was, *ipso facto* proof of the right of way for re-entry. Further, the assessment of compensation is provided under s. 16 of the Electricity Supply Act 1990. The respondent, however, did not seek remedy against the previous owner who was the sole party to have received a monetary benefit. It was not the obligation of the appellant to bring the previous owner as a party. (paras 8-10)

Bahasa Malaysia *Translation Of Headnotes*

Responden telah membeli dua lot tanah kosong yang bersebelahan di bandar Muar. Pada masa pembelian, tiada talian aliran elektrik atau menara penghantaran elektrik yang didirikan di atas lot-lot tersebut. Walau bagaimanapun, selepas pembelian, didapati bahawa perayu telah memasuki tanah tersebut dan mendirikan menara-menara penghantaran elektrik. Terdapat juga kabel elektrik besar atas tanah tersebut. Responden kemudian telah memfailkan tindakan terhadap perayu atas pencerobohan dan memohon injunksi agar perayu menghentikan dan menanggalkan semua tiang dan pilon-pilon atas tanah. Tuntutan responden dibenarkan oleh Mahkamah Tinggi. Tidak berpuas hati, perayu merayu terhadap keputusan itu. Perayu, yang mempunyai hak laluan, tetapi telah gagal mendaftarkannya pada hak milik talian penghantaran telah menanggalkan talian tersebut. Walau bagaimanapun, sebelum perayu memasuki semula tanah itu untuk melaksanakan hak laluannya, responden telah membeli dua tanah bersebelahan tersebut tanpa sebarang pengetahuan mengenai hak laluan perayu. Responden pula menghujahkan bahawa ia telah mengalami kerugian dengan bergantung kepada keadaan fizikal tanah tersebut pada masa lot-lot tersebut dibeli.

Diputuskan (membenarkan rayuan; mengenepikan keputusan Mahkamah Tinggi)

Oleh Abdul Wahab Patail HMR menyampaikan penghakiman mahkamah:

(1) Perayu telah memasuki tanah tersebut sebelum ini dan kemasukannya adalah satu kemasukan semula. Tiada keterangan pengabaian hak laluan ataupun hak laluan telah dibatalkan. Tanpa membuktikan, antara lain, bahawa talian penghantaran lama perayu yang masih ada telah mencerobohi tanah-tanah tersebut, adalah bukti *ipso facto* terdapatnya hak laluan untuk masuk semula. Tambahan lagi, penilaian pampasan diperuntukkan di bawah s. 16 Akta Bekalan Elektrik 1990. Responden tidak menuntut remedi terhadap pemilik sebelum ini yang merupakan pihak yang telah menerima faedah kewangan. Perayu tidak mempunyai obligasi untuk membawa pemilik sebelum ini sebagai salah satu pihak.

Case(s) referred to:

Cekal Berjasa Sdn Bhd v. Tenaga Nasional Bhd [2006] 8 CLJ 69 HC ***(refd)***

Tenaga Nasional Bhd v. Dolomite Industrial Park Sdn Bhd [2000] 1 CLJ 695 CA ***(dist)***

Teobros Development Sdn Bhd v. Tenaga Nasional Bhd [2007] 9 CLJ 775 HC ***(refd)***

Legislation referred to:

Electricity Supply Act 1990, ss. 11(7), 16

For the appellant – Azlan Sulaiman; M/s Abdul Raman Saad & Assocs
For the respondent – Gan Techiong; M/s Gan & Lim

[Editor's note: For the High Court judgment, please see Keyaki Corporation Sdn Bhd lwn. Tenaga Nasional Berhad [2011] 1 LNS 64.]

Reported by Kumitha Abd Majid

JUDGMENT

Abdul Wahab Patail JCA:

[1] The defendant Tenaga Nasional Berhad ('the appellant') appealed against the decision of the High Court to allow the claim by the plaintiff Keyaki Corporation Sdn Bhd ('the respondent').

[2] The respondent's case was that upon an invitation sometime in December 1995, the respondent on 25 January 1996 entered into a contract to purchase two vacant lots of adjoining land in Mukim Bakri in the town of Muar, namely EMR 1954 Lot 2450 (also known as Lot 5033) and GM 69 Lot 5184. At the time of purchase, there was neither electricity transmission lines nor electricity transmission towers on the two lots of land. There was also no endorsement at all on the register documents of title. But subsequent to his purchase, he found the appellant entering upon his land to erect massive electricity transmission towers and subsequently the stringing of huge electricity cables overhead across the two lots of land. Evidence to this effect was adduced for the respondent through their first witness and director, Mr Hau Swee Tun ('SP1').

[3] The respondent's claim was summed up at para. 1.9 of the written submissions on his behalf:

> 1.9 The respondent has suffered losses because the two lots of land were purchased relying on their physical condition as at January 1996 which was vacant land – and also relying on the register documents of titles as conclusive.

[4] The appellant's third witness Megat Kamil Azman Bin Megat Ruskamarani ('SD3') confirmed that works to dismantle an old electricity transmission line from Sungai Abong substation to Kluang substation commenced in July 1995, and as at November 1995, the dismantling of old electricity transmission line across the two lots of land had been completed. The new transmission line was completed only in year 1997.

[5] The fact matrix in this case is that the appellant, who had a right of way, which it failed to have registered on the title for its transmission lines, had removed the said transmission lines, and before the appellant re-entered the lands to exercise its right of way, the respondent had purchased the two adjoining lands with no knowledge of the right of way.

[6] The respondent relied upon *Teobros Development Sdn Bhd v. Tenaga Nasional Bhd* [2007] 9 CLJ 775; [2007] 7 MLJ 67 HC, [2008] 6 MLJ 391 CA. The Court of Appeal, in *Tenaga Nasional Berhad v. Teobros Development Sdn Bhd* (*supra*), referred to *Cekal Berjasa Sdn Bhd v. Tenaga Nasional Bhd* [2006] 8 CLJ 69; [2006] 4 MLJ 284 HC, a case where Tenaga Nasional Berhad had issued a letter stating that they have cancelled their plan to enter the land even though they have obtained an order under s. 11(7) of the

Electricity Supply Act 1990 ('the Act') years earlier. There was a clear case of abandonment. In *Teobros Development Sdn Bhd v. Tenaga Nasional Berhad*, the High Court and the Court of Appeal held that the right obtained under s. 11(7) is not a permanent right but temporary and revocable.

[7] Before us, it was submitted:

> 1.13 In our present case, the appellant had failed to show what rights they had in the first place to enter the two lots of land. The fact that there were old transmission cables in existence does not *ipso facto* prove any right to enter the land.

[8] In *Tenaga Nasional Bhd v. Dolomite Industrial Park Sdn Bhd* [2000] 1 CLJ 695; [2000] 2 MLJ 133, there was a clear finding of failure to prove rights to enter the land. In this case, the appellant had previously entered upon the land, and the impugned entry is not an entry but a re-entry. There was no evidence of abandonment of the right of way as in *Cekal Berjasa Sdn Bhd v. Tenaga Nasional Bhd* (*supra*). *Tenaga Nasional Bhd v. Dolomite Industrial Park Sdn Bhd* (*supra*) is therefore distinguishable. Further, there was no evidence that the right of way had been revoked. Without proving that the appellant's old transmission lines in existence were in fact trespassing on the lands, their existence together with the absence of evidence of revocation of the right, is in our view, *ipso facto* proof of the right of way for re-entry.

[9] The Act provides that the right of way under the Act attracts under s. 16 the assessment of compensation. The respondent's action however was for trespass and sought injunction for the appellant to quit and remove all posts and pylons, general and special damages to be assessed, interest and costs.

[10] The appellant's defence was that it had the right of way. It therefore had no obligation to bring the previous owner, the sole party to have received a monetary benefit, as a party. The respondent had apparently elected not to bring in as a party and seek remedy against the previous owner. We, therefore, leave this aspect alone.

[11] For the foregoing reasons, we allowed the appeal, set aside the orders of the High Court, fixed costs in the sum of RM20,000 here and below, and ordered that the deposit be refunded.